1908
August 8.

FULL BENCH.

Before Sir John Stanley, Knight, Chief Justice, Mr. Justice Banerji and Mr. Justice Griffin.

KUBRA JAN (PLAINTIFF) *v.* RAM BALI AND ANOTHER (DEFENDANTS).*

Civil Procedure Code, sections 16, 19—*Misjoinder of parties—Multifariousness—Suit by heir to recover property from co-heir and transferees from him—Property situate in different districts—Compromise of part of claim—Jurisdiction.*

The plaintiff sued as heiress of her father to recover from her brother and from certain transferees from him her share in the property of her deceased father. The suit was brought in the Court of the Subordinate Judge of Bareilly. Part of the property claimed was situated in the Bareilly district and part in the district of Bara Banki in Oudh. During the course of the suit a compromise was arrived at regarding the Bareilly property and the suit proceeded with reference to the property in Oudh alone. *Held* (1) that the plaintiff had properly impleaded her brother and the transferees from him as co-defendants in one suit, and (2) that, there being no fraud or improper motive alleged with reference either to the compromise or to the filing of the suit in the court at Bareilly, that court was not by reason of the compromise divested of jurisdiction to hear and decide the suit in respect of the property situate in Oudh. *Ram Raji* v. *Dhup Narain* (1) overruled. *Indar Kuar* v. *Gur Prasad* (2), *Mazhar Ali Khan* v. *Sajjad Husain Khan* (3), *Parbati Kunwar* v. *Mahmud Fatima* (4), *Ishan Chunder Hazra* v. *Rameswar Mondol* (5) and *Nundo Kumar Nasker* v. *Banomali Gayan* (6) referred to. *Ganeshi Lal* v. *Khairati Singh* (7) distinguished. *Khatija* v. *Ismail* (8) followed.

THIS was a suit brought by the daughter of one Bande Ali to recover from her brother Akbar Husain and a number of other defendants, transferees from him, her share in the property of her deceased father. This property was situate in the district of Bareilly, and also in the district of Bara Banki in Oudh. It appears that Akbar Husain transferred the Bareilly property to the defendants Nos. 2 to 8 and the Bara Banki property to persons from whom the defendant respondent Ram Bali acquired it by virtue of a decree for pre-emption. The suit in regard to the Bareilly property was compromised, with the result that the claim

* Second Appeal No. 941 of 1907 from a decree of E. O. E. Leggatt, District Judge of Bareilly, dated the 8th of June 1907, reversing a decree of Pitambar Joshi, Subordinate Judge of Bareilly, dated the 26th of March 1906.

(1) Weekly Notes, 1885, p. 125.
(2) (1888) I. L. R., 11 All., 33.
(3) (1902) I. L. R., 24 All., 358.
(4) (1907) I. L. R., 29 All., 267.
(5) (1897) I. L. R., 24 Calc., 831.
(6) (1902) I. L. R., 29 Calc., 871.
(7) (1894) I. L. R., 16 All., 279.
(8) (1889) I. L. R., 12 Mad., 380.

in respect of that property was abandoned, and the suit proceeded as regards the Bara Banki property only.

The first Court (Subordinate Judge of Bareilly) decreed the suit. But upon appeal the lower appellate Court (District Judge of Bareilly) reversed the decree and dismissed the plaintiff's suit, holding, on the authority of the case of *Ram Raji* v. *Dhup Narain* (1) that the Court in Bareilly had no jurisdiction to pass a decree in the suit.

Maulvi *Ghulam Mujtaba*, for the appellant contended that the suit was not bad for multifariousness, nor did the fact that the suit had been compromised so far as it related to the Bareilly property deprive the Bareilly Courts of jurisdiction. He relied on *Inda Kuar* v. *Gur Prasad* (2), *Mazhar Ali Khan* v. *Sajjad Husain Khan* (3), *Parbati Kunwar* v. *Mahmud Fatima* (4), *Khatija* v. *Ismail* (5), and *Harchandar* v. *Lal Bahadur* (6).

Mr. *Muhammad Ishaq Khan* (with whom Munshi *Jang Bahadur Lal*), for the respondents, relied on *Ram Raji* v. *Dhup Narain* (7), *Ganeshi Lal* v. *Khairati Singh* (8) and *Jhandu Mal* v. *Pirthi* (9).

STANLEY, C.J.—This appeal has been laid before a Full Bench by reason of a conflict in the authorities upon a question raised in the appeal. The suit is one by the daughter of one Bande Ali to recover from her brother Akbar Husain and a number of other defendants, transferees from him, her share in the property of her deceased father. This property is situate in the district of Bareilly and also in the district of Bara Banki in Oudh. It appears that Akbar Husain transferred the Bareilly property to the defendants Nos. 2 to 8 and the Bara Banki property to persons from whom the defendant respondent Ram Bali acquired it by virtue of a decree for pre-emption. The suit in regard to the Bareilly property was compromised, with the result that the claim in respect of that property was abandoned, and the suit proceeded as regards the Bara Banki property only.

(1) Weekly Notes, 1885, p. 125.
(2) (1888) I. L. R., 11 All., 33.
(3) (1902) I. L. R., 24 All., 358.
(4) (1907) I. L. R., 29 All., 267.
(5) (1889) I. L. R., 12 Mad., 380.
(6) (1894) I. L. R., 16 All., 359.
(7) Weekly Notes, 1885, p. 125.
(8) (1894) I. L. R., 16 All., 359.
(9) Weekly Notes, 1907, 53.

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The first Court decreed the suit. But upon appeal the Lower Appellate Court reversed the decree and dismissed the plaintiff's suit, holding, on the authority of the case of *Ram Raji* v. *Dhup Narain* (1) that the Court in Bareilly had no jurisdiction to pass a decree in the suit.

From that decree the present appeal has been preferred. The questions in the case are whether the suit is bad for multifariousness and whether the Subordinate Judge of Bareilly was justified in entertaining it after the compromise of the claim in respect of the Bareilly property.

There appears to be no doubt that under section 19 of the Code of Civil Procedure the plaintiff was justified in instituting the suit in the Bareilly Court unless it be that the claim was defective for multifariousness. We have therefore first to consider whether or not the suit of the plaintiff was bad for this reason.

The claim of the plaintiff was to recover from her brother her co-heir and transferees from him her share of the property of her father. The cause of action, as it appears to me, was the withholding of possession of her share, and it accrued to her when such possession was withheld. Her brother appropriated the share of the property which belonged to her and any title which his transferees possess is derived from him alone. There were not two causes of action, one against her brother and the other against the transferees of her brother, but a single cause of action, namely, the infringement of the plaintiff's right by her brother, out of which the claim of the other defendants arose. This view is supported by several authorities, and amongst others that of *Indar Kuar* v. *Gur Prasad* (2). In that case the plaintiff claimed the property in dispute by right of inheritance from his deceased mother, and impleaded in the suit several defendants, some of whom derived their title as mortgagees from one of the defendants. It was held that inasmuch as the title of the defendant mortgagee was derived from defendant No. 1, his mortgagor, and stood or fell with the failure or success of the plaintiff's claim against the latter, there were not two causes of action, but one, namely, the infringement

(1) Weekly Notes, 1885, p. 125. (2) (1888) I. L. R., 11 All., 33.

of the plaintiff's right by the defendant No. 1, and that the suit was not bad for misjoinder of causes of action. In the case of *Mazhar Ali Khan* v. *Sajjad Husain Khan* (1) Mazhar Ali Khan came into Court claiming a portion of the inheritance of a deceased Muhammadan on the allegation that he had by two separate sale-deeds of two different dates purchased the property from two of the heirs of the deceased and that the property was withheld from him by another heir of the deceased who was in possession of some of it and by certain transferees of other portions from the said heir. Both the remaining heir and the transferees from him were made defendants. It was held by my brothers Banerji and Aikman that there was no misjoinder of parties or causes of action in such a suit. A similar question was considered by another Bench of this Court of which I was a member in the case of *Parbati Kunwar* v. *Mahmud Fatima* (2). In that case the plaintiffs sued as heirs of their father to recover various portions of their father's estate from the hands of different alienees. It was held that the fact that the defendants set up different titles to the various portions held by them would not render the suit bad for multifariousness. The plaintiffs had one cause of action, namely, the right on the death of their father to obtain possession of their shares of his property. In coming to that conclusion we had the support of the ruling to which I have alluded and also of two decisions of the Calcutta High Court passages out of which were quoted in the judgment. These cases are *Ishan Chunder* v. *Rameswar Mondol* (3), and *Nundo Kumar Nasker* v. *Banomali Gayan* (4). In the first of these two cases it was held by O'Kinealy and Hill, JJ., that in a suit for ejectment against several defendants who set up various titles to different parts of the land claimed, there was only one cause of action, not several distinct and separate causes of action. In the other case the defence that the suit was bad for multifariousness was set up, the allegation of the defendants being that they were severally in possession of different and distinct portions of the land in dispute under different demises made by the first defendant and that there was no community

(1) (1902) I. L. R., 24 All., 358.
(2) (1907) I. L. R., 29 All., 267.
(3) (1897) I. L. R., 24 Calc., 831.
(4) (1902) I. L. R., 29 Calc., 871.

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of interest. I quote portion of the judgment in that case which appears to me to be apposite. In delivering their judgment Hill and Brett, JJ., observed:—"The cause of action of a plaintiff sueing in ejectment cannot, so far as we can perceive, be affected by the title under which the defendant professes to hold possession. It matters not to the plaintiff how the defendant may explain the fact that he is in possession or seek to defend his possession. What concerns the plaintiff is that another is wrongfully in possession of what belongs to him, and that fact gives him his cause of action. If this is so where there is but one person in possession, can there be a difference when the land is in the possession of more than one? We think not. It appears to us, so far as the plaintiff's cause of action is concerned, that it is a matter of indifference to him upon what grounds the different persons in possession may seek to justify the wrongful detention of what is his. What he is entitled to claim is the recovery of possession of his land as a whole and not in fragments, and we think that all persons who oppose him in the enforcement of that right are concerned in his cause of action and ought accordingly to be made parties to a suit in which he seeks to give effect to it." I agree in these observations, and they seem to me to be applicable to the case before us. The plaintiff is claiming her share of her father's property. She finds her brother and transferees from her brother in possession. She is not under such circumstances obliged to bring independent actions against her brother and each of the transferees, but, claiming, as she does, title from her father, and having, as I think, only one cause of action, she may properly implead all the parties in possession as defendants in one suit.

We have been pressed very much with the decision of a Bench of this High Court in the case of *Ram Raji* v. *Dhup Narain* (1).—In that case under circumstances very similar to those in the case before us Petheram, C. J., and Brodhurst, J. held that a similar suit was not maintainable. In that case the property which was claimed was situate in the Gorakhpur district and also in Oudh. During the pendency of the suit

(1) Weekly Notes, 1885, p. 125.

there was a compromise in respect of the Gorakhpur property, and in consequence of this the learned District Judge, reversing the decision of the Subordinate Judge, held that the Subordinate Judge had acted without jurisdiction in deciding the question between the parties in regard to the property situate in Oudh on the ground that it was an undeniable misjoinder of causes of action which gave the Subordinate Judge apparent jurisdiction under section 19 of the Code of Civil Procedure, but that in point of fact he was not competent to entertain the part of the claim which related to the property situate in Oudh. The learned Judges upheld the decision of the District Judge upon the ground stated in the judgment. Petheram, C. J., in the course of his judgment says:—"The learned Judge was of opinion that the Court had no jurisdiction to decide the suit, and I think that he was right. When a suit is brought against *A* in respect of property situate in one district and against *B* in respect of property situate in another district, I do not think that the fact that there is a common root to the plaintiff's claim makes a single cause of action upon which he is entitled to bring a single suit. I think therefore that the claim in respect of the property in Oudh was properly the subject of a separate suit, and that therefore the provisions of section 16 must be applied, which says that suits are to be instituted in the Court within the local limits of whose jurisdiction the property is situate." The learned Judges decided that case therefore on the ground that the plaintiff had not one cause of action only but several causes of action in respect of the property in the two districts. I am with all respect, unable to agree with them as to this. I think that the cases to which I have referred were rightly decided, and they conclusively show that there was only one cause of action and that cause of action was the infringement of the plaintiff's title. I am unable therefore to agree in this decision.

Mr. *Ishaq Khan* on behalf of the respondents also relied upon the case of *Ganeshi Lal* v. *Khairati Singh* (1) as supporting his contention. That was a suit in which the plaintiff claimed to be entitled on the death of a Hindu widow to the possession of

(1) (1894) I. L. R., 16 All., 279.

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certain immovable property, and brought a suit against three sets of defendants, being persons to whom the widow in her lifetime had by separate alienations transferred separate portions of the property claimed. It was held that the suit was bad for multifariousness. It will be at once noticed that this was a suit, not against one of the heirs of a deceased person and the transferees from such heir, but against three sets of transferees from a Hindu widow. In such a case the transferees, or some of them, may have acquired a good title from their transferor; for instance, in the case of a sale to meet a legal necessity, whilst to others of the transferees no such defence might be open. The facts are not identical with the facts in the case before us, though I think the judgment of the learned Judges does lend some support to the argument which has been laid before us.

Again, it is said that after the compromise in respect of the Bareilly property the Court ceased to have any jurisdiction to deal with the plaintiff's claim, that is, that though the Bareilly Court had jurisdiction, when the plaint was filed, to deal with the suit, it ceased to have jurisdiction when portion of the property claimed was withdrawn from the litigation. It seems to me that once jurisdiction is vested in a Court, in the absence of a provision of law to the contrary, that jurisdiction will not be taken away by any act of the parties. There is no allegation here that the plaint was filed in the Bareilly Court with any intention to defeat the provisions of the Code of Civil Procedure as regards the venue of suits for recovery of immovable property. If any fraud of that kind had been alleged and proved, other considerations would arise. But in this case, as I have said, no such suggestion has been made.

The learned Council for the respondents has not been able to point out to us any provision of law whereby jurisdiction once vested is taken away in a case of this kind, and I am unable to yield to the contention which has been raised by him. I am supported in this view by the ruling of a Bench of the Madras High Court in the case of *Khatija* v. *Ismail* (1). Muttusami Ayyar and Parker, JJ., in their judgment in that case observed:—"It is not denied that the Subordinate Judge had

(1) (1889) I. L. R., 12 Mad., 380.

jurisdiction over the suit when it was filed. As originally framed it embodied a claim to a share of immovable property situated partly in Mangalore and partly in Bhatkal. The subsequent withdrawal of the claim in regard to the property at Mangalore on the ground that there was a compromise entered into with the defendants who had it in their possession could not, in the absence of a positive rule of law, operate to take away the jurisdiction which had once vested, unless the compromise was shown to have been otherwise than *bonâ fide* and a mere contrivance to defeat or a fraud upon the policy of the rule of procedure as to local jurisdiction."

For these reasons I would allow the appeal, set aside the decree of the lower appellate Court and remand the appeal to that Court for determination on the merits.

BANERJI, J.—I am entirely of the same opinion. The decision of this Court in *Ram Raji* v. *Dhup Narain* (1) no doubt supports the view of the learned Judge, but with great respect to the learned Judges of this Court who decided that case, I am unable to agree with them. That decision is based on the consideration that the suit offended against the provisions of section 16 of the Code of Civil Procedure. The learned Judges were of opinion that a single suit could not be brought against the different transferees of the property, and that there was a misjoinder of causes of action. For the reasons stated by the learned Chief Justice I am unable to hold that there were different causes of action which had been joined together in the same suit. The plaintiff's cause of action was the infringement of her title by a single person, and, as the titles of the other defendants were derived from the person who infringed the plaintiff's title, there was a single cause of action against the different defendants. This view has been held in the numerous cases to which the learned Chief Justice has referred, and it is unnecessary for me to cite them again. The plaintiff was therefore competent to maintain a single suit both against the transferor and his transferees. Under section 19 of the Code of Civil Procedure the Court in which a part of the property was situate had jurisdiction to entertain the suit. The Court at Bareilly in this case had

(1) Weekly Notes, 1885, p. 125.

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therefore jurisdiction over the suit and rightly entertained it when it was instituted. The fact that a portion of the claim was withdrawn could not, in the absence of fraud, oust a Court of its jurisdiction. If the withdrawal was the result of an intention to defeat the provisions of the law and to confer jurisdiction on a Court which would otherwise have no jurisdiction that would be a different matter. But, as in the present case there is no suggestion of fraud, the mere fact of a portion of the claim being abandoned by a compromise could not, in the absence of any statutory provision, divest the Court of the jurisdiction which was vested in it by law. I am not aware of any such provision and the learned counsel has referred us to none. For these reasons I concur in the order proposed by the learned Chief Justice.

GRIFFIN, J.—I concur with the learned Chief Justice in the order proposed by him.

BY THE COURT.—The order of the Court is that the appeal be allowed, the decree of the learned District Judge be set aside and the appeal be remanded to him under section 562 of the Code of Civil Procedure with directions that it be reinstated in the file of pending appeals in its original number and be disposed of on the merits, regard being had to the observations which have been made by us in our judgments. We direct that the costs of this appeal and the costs heretofore incurred do abide the event.

Appeal decreed and cause remanded.

APPELLATE CRIMINAL.

1908
August 10.

Before Mr. Justice Richards and Mr. Justice Karamat Husain.

EMPEROR *v.* BHAGWAN DIN AND ANOTHER. *

Act No. XLV of 1860 (*Indian Penal Code*), *sections* 302, 304, 325, 328 *and* 329—*Administration of dhatura for the purpose of facilitating robbery—Death of person to whom dhatura is so administered—Offence not murder, but causing grievous hurt.*

Where, for the purpose of facilitating robbery, dhatura was administered by two persons to certain travellers, in consequence of which one of the travellers died and others were made seriously ill, it was *held* that in respect

* Criminal Appeal No. 350 of 1908 against an order of S. R. Daniels, Sessions Judge of Cawnpore, dated the 27th of March 1908.